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No. 90-103

In The

Supreme Court of the United States

October Term, 1990

PENNHURST STATE SCHOOL
& HOSPITAL, *et al.*,

Petitioners,

vs.

TERRI LEE HALDERMAN, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Third Circuit

BRIEF IN OPPOSITION OF ARC/PA, *et al.*

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QUESTIONS PRESENTED

1. Whether the District Court properly ordered petitioners to comply with a consent decree previously entered as an order of the Court, where the District Court had not vacated its orders or dismissed the action?

2. Whether the District Court properly interpreted a consent decree entered as an order of the Court to provide that certain provisions of the decree would remain in effect permanently?

3. Whether this Court may reverse the District Court's factual finding that petitioners were not in substantial compliance with the consent decree, where those findings were not challenged on appeal?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 5

I. No Difference of Judicial Authority Exists on the Question Whether A District Court Has Authority To Enforce A Consent Decree Entered As An Order of the Court. 5

II. The District Court Properly Interpreted The Orders in Appendix A of the Final Settlement Agreement as Permanent Orders. 8

TABLE OF CONTENTS - Continued

Page

III. The Court of Appeals Correctly Upheld the District Court's Finding that Petitioners Were Not in Substantial Compliance With the Provisions of the Final Settlement Agreement. 9

CONCLUSION 10

TABLE OF AUTHORITIES

Page

Aro Corporation v. Allied Witan Co., 531 F.2d 1368 (1976) 6

Bostick Foundry v. Lindberg, 797 F.2d 280 (6th Cir. 1986) 6

Callie v. Near, 829 F.2d 888 (9th Cir. 1987) 5

Fairfax Countywide Citizens Association v. Fairfax County, 571 F.2d 1299 (4th Cir. 1978) 6

Halderman v. Pennhurst State School and Hospital, 612 F.2d 84 (3d Cir. 1979) 1

Halderman v. Pennhurst State School and Hospital, 673 F.2d 647 (3d Cir. 198) 1

In re Department of Energy Stripper Well Exemption Litigation, 864 F.2d 796 (Em. App. 1988) 5

Kent v. Baker, 815 F.2d 1395 (11th Cir. 1987) 7

TABLE OF AUTHORITIES - Continued

Page

Londono v. City of Gainesville, 768 F.2d 1223 (11th Cir. 1985) 7

McCall-Bey v. Franzen, 777 F.2d 1178 (7th Cir. 1985) 6

Mid-South Towing Co. v. Har-Win, Inc. 733 F.2d 398 (5th Cir. 1984) 5

Pennhurst State School and Hospital v. Halderman, 451 U.S. 1 (1981) 1

Pennhurst State School and Hospital v. Halderman, 465 U.S. 89 (1984) 1

Sarabia v. Toledo Police Patrolman's Association, 601 F.2d 914 (6th Cir. 1979) 5

Washington Hospital v. White, 889 F.2d 1294 (3d Cir. 1989) 5

STATEMENT OF THE CASE

This class action was filed in May, 1974, by residents of Pennhurst Center, a state institution for persons with retardation, against officials of the Commonwealth of Pennsylvania. In 1975, the Pennsylvania Association for Retarded Citizens (now ARC/PA) intervened as plaintiffs, adding as defendants the Mental Health/Mental Retardation Administrators of several Pennsylvania counties. After a lengthy trial, the District Court ordered the defendants to execute a planned closure of Pennhurst and provide class members with community-based residences, case management and other support services. These orders were appealed twice to the Court of Appeals for the Third Circuit and to this Court. *See Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1 (1981); *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89 (1984); *Halderman v. Pennhurst State School and Hospital*, 612 F.2d 84 (3d Cir. 1979); *Halderman v. Pennhurst State School and Hospital*, 673 F.2d 647 (3d Cir. 1982).

After remand from this Court in 1984, the parties negotiated a settlement agreement with the assistance of a Third Circuit judge assigned for that purpose. After a Rule 23(e) hearing, the District Court approved the settlement and entered it as a consent decree. The Court's order states,

> "IT IS HEREBY ORDERED that the Final Settlement Agreement is APPROVED, and

> IT IS FURTHER ORDERED that the provisions of the Final Settlement Agreement executed on July 12, 1984 heretofore made a part of the record in this case shall have the full force and effect of an Order of this Court."

Petition, District Court Op. 24-25.

The Final Settlement Agreement has four components. The main body of the agreement provides for the closure of Pennhurst by June 30, 1986, the placement of class members in alternative residences, a hearing procedure for contested placements, and enforcement proceedings. Appendix A sets forth the specific services and safeguards to be provided each class member by Commonwealth and County defendants. Appendix B concerns the allocation of the funds made available by the closure of Pennhurst, procedures for cost review of individual plans and application for federal funding. Appendix C contains the notice to the class.

The two paragraphs of the Final Settlement Agreement at issue here are ¶¶ 14 and 15 of the main body of the Agreement. Paragraph 14 states that

> "Subject to paragraphs 15 and 16 below, the parties agree that as of the dates specified in those paragraphs, the District Court will mark this case closed and settled, will vacate the judgment and all orders of the Court except those in Appendix A, which shall remain in effect permanently

(subject to Fed.R. Civ. P. 60(b)), and will cease to have active jurisdiction of this case."

The "dates specified" were, for each of the County defendants, two years after the last of the County's residents left Pennhurst, and for the Commonwealth defendants, July 1, 1989. However, the "dates specified" were affected by a later amendment to the decree, approved by the Court on December 3, 1986, to give the defendants more time for closure of Pennhurst. The amendment provided that

"The time for ending the Court's active jurisdiction set forth in the Final Settlement Agreement is hereby tolled until the last resident of the Defendant County or out-of-region counties leaves Pennhurst for an appropriate community placement, at which time the specified time period shall continue to run."

The last resident of a defendant or out-of-region county left Pennhurst on October 27, 1987.

Paragraph 15 provides that if before the "date specified" for each defendant, the District Court makes a finding that the defendants are not in substantial compliance with any provision of the Agreement or its Appendices, that finding "will prevent the actions described in Paragraph 14," i.e. the Court's vacating its prior orders.

On May 22, 1989, ARC/PA filed two motions for enforcement, extension of the Final Settlement Agreement and further orders against two Defendant

counties and the Commonwealth defendants, claiming that numerous class members in the two counties were denied the habilitative services mandated by Appendix A of the Final Settlement Agreement, including community living arrangements, individual habilitation plans and case management. The motions were joined by the Halderman plaintiffs on March 29, 1989.

The District Court held four days of hearings on the motions beginning on June 21, 1989 and ending on July 6, 1989. On the morning of June 29, the plaintiffs rested their case and the District Court asked the defendants who would like to proceed next; the petitioners stated that they would prefer to put on their case after the two counties put on theirs. On July 6, 1989, before beginning their case, the petitioners filed a motion to dismiss all outstanding motions against them, arguing that the District Court's jurisdiction to enforce the Final Settlement Agreement had ended on July 1, 1989, the "date specified" in the unamended version of the Final Settlement Agreement. The District Court had not vacated or dismissed its prior orders pursuant to ¶ 14 of the Final Settlement Agreement nor had any party moved that it do so on the ground that the "date specified" had arrived.

On August 28, 1989, the district court issued an opinion and order, holding that the two counties and the Commonwealth were not in substantial compliance with the Final Settlement Agreement. Specifically, the District Court found that nearly 75

class members were denied the services mandated by the Final Settlement Agreement and gave the defendants six months to achieve compliance.

The Court of Appeals, on April 17, 1990, affirmed, holding that "under the plain terms of the [Final Settlement Agreement], the district court had jurisdiction to enforce violations of its orders in Appendix A" and that there were "no errors in the district court's determination that the Commonwealth, Montgomery County and Delaware County are all in substantial noncompliance with the terms of Appendix A." Petition, Third Cir. Op. at 30.

REASONS FOR DENYING THE WRIT

I. No Difference of Judicial Authority Exists on the Question Whether A District Court Has Authority To Enforce A Consent Decree Entered As An Order of the Court.

It is thoroughly settled that a federal court retains jurisdiction to enforce a settlement agreement in a case pending before it. *See, e.g., Washington Hospital v. White*, 889 F.2d 1294, 1299 (3d Cir. 1989); *In re Department of Energy Stripper Well Exemption Litigation*, 864 F.2d 796, 800 (Em. App. 1988) (collecting cases); *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987) (collecting cases); *Mid-South Towing Co. v. Har-Win, Inc.* 733 F.2d 398, 389 (5th Cir. 1984); *Sarabia v. Toledo Police Patrolman's Association*, 601 F.2d 914, 917 (6th Cir. 1979).

The cases cited by petitioners as "conflicting" authority are inapposite because they concern cases in which the district court, after it was notified that the parties had settled the case, entered a final order simply dismissing the case. In the case at bar, as in other cases in which the court has entered the parties' settlement as an order of the court, the case was never dismissed but remained pending during the entire enforcement proceeding.

The "conflict" that petitioners cite concerns an issue that this case does not present: whether a court has inherent jurisdiction to enforce, *after final dismissal of the case*, a settlement that was never entered as an order of the court. *Compare, e.g., Bostick Foundry v. Lindberg*, 797 F.2d 280, 283 (6th Cir. 1986) *and Aro Corporation v. Allied Witan Co.*, 531 F.2d 1368, 1371 (1976) (court may enforce agreement after dismissal); *with, Fairfax Countywide Citizens Association v. Fairfax County*, 571 F.2d 1299, 1303 (4th Cir. 1978) (court may not enforce agreement after dismissal).

In the cases cited by petitioners, the courts of appeal consistently have adhered to this distinction. For example, in *McCall-Bey v. Franzen*, 777 F.2d 1178, 1188 (7th Cir. 1985), the Court of Appeals held that a district court has jurisdiction to enforce a settlement agreement as long as it has expressed an intent to retain jurisdiction after settlement. The court stated that while it rejected any suggestion "that federal judges have inherent power to enforce settlement agreements arising out of lawsuits that

were once before them," it had "no doubt" of the power of a district judge "to dismiss a lawsuit conditionally, retaining jurisdiction to effectuate terms of settlement agreed to by the parties." *Ibid.*

Similarly, in *Kent v. Baker*, 815 F.2d 1395, 1398 (11th Cir. 1987), the Court of Appeals held that the district court had jurisdiction to enforce a settlement agreement where the alleged breach of the agreement occurred "[a]fter the parties announced that they had settled, but before the court dismissed the action." The court noted that "the great weight of binding precedent in this and other circuits holds that a district court has jurisdiction to enforce a settlement agreement, at least when a party refuses to comply with the agreement before the case has been dismissed." *Ibid. Londono v. City of Gainesville*, 768 F.2d 1223 (11th Cir. 1985), cited by petitioners, is inapposite because the issue there was whether the parties had in fact entered into a binding agreement. The Eleventh Circuit vacated the district court's order enforcing the settlement agreement because the district court had not considered this factor. 768 F.2d at 1226.

Here, the district court clearly retained jurisdiction to enforce the Final Settlement Agreement since it entered the Agreement as an order of the Court and had never vacated its order or dismissed the case. Petitioners have cited no authority holding that a court cannot enforce a consent decree under these circumstances.

That the circuits are in conflict on an issue not presented by this case is not reason to grant certiorari.

II. The District Court Properly Interpreted The Orders in Appendix A of the Final Settlement Agreement as Permanent Orders.

At the time of the proceedings below, the District Court had not vacated its orders incorporating the Final Settlement Agreement. But even if the Commonwealth were correct that the District Court somehow magically lost jurisdiction to enforce those orders at midnight on June 30, 1989, the orders in Appendix A clearly would be an exception since according to the plain language of ¶ 14 of the Final Settlement Agreement, those orders are not to be vacated but remain in effect "permanently (subject to Fed. R. Civ. P. 60(b))." As the Court of Appeals held, the provisions of Appendix A plainly are orders of the District Court, since they are referred to in Final Settlement Agreement as "orders of the Court" and the reference to Rule 60(b) confirms that they are enforceable in federal court.

In any case, the District Court and the Court of Appeals properly interpreted the phrase "active jurisdiction" as used in ¶ 14 the Final Settlement Agreement. As the Court of Appeals held, the use of the term "active jurisdiction" "suggests an attempt to

contrast active jurisdiction with some other kind of jurisdiction." If the parties had meant that the District Court's jurisdiction over the parties and the subject matter were to end automatically on the dates specified, the parties would have "simply left the word 'jurisdiction' unqualified." Petition, Third Cir. Op. 19.

III. The Court of Appeals Correctly Upheld the District Court's Finding that Petitioners Were Not in Substantial Compliance With the Provisions of the Final Settlement Agreement.

According to the District Court's findings of fact, petitioners were not in substantial compliance with the Final Settlement Agreement with respect to 74 members of the plaintiff class from the two defendant counties. On appeal, neither petitioners nor the other defendants challenged those findings as clearly erroneous or unsupported by the record. Neither did they assert that the 74 class members were, in fact, receiving the services mandated by the Final Settlement Agreement.

The petitioners' characterization of the standard applied by the Court of Appeals as requiring "universal and continuous satisfaction of all plaintiffs" is absurd and certainly bears no relation to the standard actually applied by that court or the District Court. In any event, the issue of the petitioner's "substantial compliance" with the terms of

a particular settlement agreement has little importance beyond the case at bar and is hardly the kind of issue on which this Court should grant certiorari.

CONCLUSION

For the reasons stated above, the petition for certiorari should be denied.

Respectfully submitted,

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